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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/517,290	05/23/2005	Koji Fujita	KIT 377 (10415624)	4479
24972	7590	05/30/2006	EXAMINER	
FULBRIGHT & JAWORSKI, LLP 666 FIFTH AVE NEW YORK, NY 10103-3198			KRECK, JOHN J	
			ART UNIT	PAPER NUMBER
			3673	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/517,290		FUJITA, KOJI	
	<b>Examiner</b>		<b>Art Unit</b>	
	John Kreck		3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-6, 8 and 9 is/are rejected.
- 7) ☒ Claim(s) 2 and 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

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### **DETAILED ACTION**

The preliminary amendment dated 5/23/05 has been entered.

Claims 1-9 are pending.

The preliminary amendment filed 5/23/05 was not properly considered in the office action mailed 5/15/06. Since this has been brought to the office's attention within one month, the period for reply is restarted.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "said grain material". There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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1. Claims 1, 3, 4, 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dwyer, et al. (U.S. Patent number 6,357,968) in view of JP2001-200236A.

Dwyer teaches a construction comprising a wall member having permeability.

Dwyer teaches the reactive nature of the wall, for the purpose of preventing spread of contamination in the soil, but lacks the rare earth.

JP2001-200236A teaches that rare earth compound (cerium oxide) is effective to insolubilize arsenic. One of ordinary skill in the art would have recognized that insolubilizing arsenic would be desirable to prevent spreading of arsenic pollution. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the Dwyer construction to have included a rare earth, as called for in claim 1.

Dwyer teaches the water absorptive substance as called for in claim 3. See col. 3, lines 60-65.

With regards to claim 4: Dwyer teaches gravel (col. 3, line 52); one of ordinary skill in the art would have understood the teaching of JP2001-200236A to suggest a rare earth compound with particles smaller than gravel, since small particles are well known to react more quickly and completely than large particles; thus the limitation of claim 4 would have been obvious.

With regards to claim 6, 8, and 9: JP2001-200236A plainly discloses the ceric oxide hydroxide.

2. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dwyer and JP2001-200236A as applied to claim 3 above, and further in view of Pelot, et al. (U.S. Patent number 6,699,321).

Dwyer lacks the glass cullet, but discloses cement or concrete generally.

Pelot teaches that glass cullet may be advantageously be used in concrete compositions, in order to recycle the glass. It would have been obvious to one of ordinary skill in the art at the time of the invention to have further modified the Dwyer construction to have included glass cullet, in order to recycle the glass waste.

***Allowable Subject Matter***

3. Claims 2 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. SU 1423548A (Derwent abstract) is cited for teaching of decorative ceramic bricks including cerium and glass cullet. One of ordinary skill in the art would not be motivated to use "decorative" bricks for underground use as called for in the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Kreck whose telephone number is 571-272-7042. The examiner can normally be reached on Mon-Thurs 530am-2pm; Fri: telework.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



John Kreck  
Primary Examiner  
Art Unit 3673

23 May 2006